

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1582, L.D. 2232, Bill, "An Act to Prevent Procurement of Controlled Substances through Fraud"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 17-A MRSA §1108, as amended by PL 1983, c. 350, is further amended to read:

§1108. Acquiring or attempting to acquire drugs by deception

1. A person is guilty of acquiring or attempting to acquire drugs by deception if, ~~as-a-result~~ by the use of deception, he that person obtains or exercises control over or attempts to obtain or exercise control over what he that person knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug.

2. As used in this section, "use of deception" ~~has-the-same meaning-as-in-section-354,-subsection-2~~ means to intentionally create or reinforce or intentionally seek to create or reinforce an impression that is false and that the person creating or reinforcing that impression does not believe to be true. False impressions include, but are not limited to:

A. Forging or altering a prescription drug order or any written order;

B. Concealing a material fact;

C. Using a false name or giving a false address;

2 D. Making a false statement on or failing to prepare,
obtain or keep any prescription drug order, written order,
4 report or record;

6 E. Professing to be a manufacturer, wholesaler, pharmacist,
practitioner, veterinarian or other authorized person;

8 F. Making or uttering any false or forged prescription drug
order or written order; or

10 G. Independently consulting 3 or more practitioners
12 purportedly for diagnosis or treatment.

14 3. For purposes of this section, information communicated
to a ~~physician~~ practitioner in an effort to violate this section,
16 including a violation by procuring the administration of a
scheduled drug by deception, shall is not be deemed a privileged
18 communication.

20 3-A. As used in this section, the following terms having
the following meanings.

22 A. "Material" means capable of influencing the providing or
24 obtaining of scheduled drugs or exercising control over
scheduled drugs or the decision to issue a prescription drug
26 order.

28 B. "Practitioner" has the same meaning as in Title 32,
section 13702, subsection 23.

30 C. "Prescription drug order" has the same meaning as in
32 Title 32, section 13702, subsection 25.

34 4. Acquiring drugs by deception or attempting to acquire
drugs by deception is:

36 A. A Class C crime if the drug is a schedule W, X or Y
38 drug; or

40 B. A Class D crime if the drug is a schedule Z drug.

42
44 **FISCAL NOTE**

46 The expanded definition of criminal activity associated with
the procurement of drugs will impact the correctional and
48 judicial systems.

2 Sentences imposed for a Class C crime must be served in a
state correctional institution. The cost per sentence is \$40,640
4 based upon an average length of stay of one year and 9 months.

6 Sentences imposed for Class D offenses must be served in a
county jail facility. The additional costs to the counties for
8 housing each person sentenced under the crime will require full
funding by the State as a state mandate pursuant to the Maine
10 Revised Statutes, Title 30-A, section 5684. The General Fund
appropriations required to fund these costs can not be estimated
12 at this time. The cost per sentence for a Class D crime is
\$7,140 based upon an average length of stay of 119 days.

14 The additional workload and administrative costs associated
with the minimal number of new cases filed in the court system
16 can be absorbed within the budgeted resources of the Judicial
Department.

20 STATEMENT OF FACT

22 This amendment replaces the bill. It strengthens the law
prohibiting the acquisition of drugs by deception by defining the
24 term "use of deception" to mean intentionally creating or
reinforcing a false impression that the actor knows is not true.
26 The amendment includes a list of activities that create "false
impressions."

28 The amendment makes attempting to acquire drugs by deception
30 the same class of crime as the successful completion of the
crime. This is in response to the fact that many of these crimes
32 are discovered before they are completed. The fact that law
enforcement investigators notify the pharmacist that a particular
34 person may be bringing in a false prescription to be filled, or
that the pharmacist is suspicious about a particular prescription
36 and notifies law enforcement before filling it, should not negate
the fact that the person, but for the investigation or the
38 pharmacist's watchfulness, would have successfully completed the
crime. This change is similar to the upgrading of classification
40 for attempting to traffick in prison contraband.

42 The amendment also adds definitions for terms used and uses
the term "scheduled drugs" as defined in the Maine Criminal Code.

44 The amendment deletes from the bill guidelines for
46 practitioners regarding writing prescription drug orders. These
guidelines are essentially contained in other State and federal
48 laws as well as state pharmacy rules.

Reported by the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the
House

9/92

(Filing No. H-1170)

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COMMITTEE AMENDMENT